IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WA.No. 694 of 2007()

AGAINST THE JUDGEMENT IN WPC.5174/2007 Dated 20/02/2007
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APPELLANTS: 1ST & 2ND RESPONDENTS
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1. THE MALAYATTOOR NEELESWRAM GRAMA PANCHAYAT REP.BY ITS SECRETARY,PANCHAYAT OFFICE, NEELESWRAM.

2. THE PRESIDENT,MALAYATTOOR NEELESWARAM GRAMA PANCHAYAT,PANCHAYAT OFFICE,NEELESWARAM P.O.

BY ADV. SMT.REKHA C.NAIR

RESPONDENT/PETITIONER

V.K.SHAJI,LIBRARIAN,MALAYATOOR-NEELESWARAM GRAMA PANCHAYAT,RESIDING AT VATTAPARA HOUSE,NEELESWARAN P.O,VIA KALADY, ERNAKULAM.

BY ADV. SRI S. RAMESH BABU

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC,JJ.

W.A.NO.694 OF 2007

Dated this the 19th day of March, 2007

JUDGMENT

Raman,J.

Respondents in W.P.(C).No.5174/2007 are the appellants herein. The respondent herein filed the above writ petition seeking to quash an order of suspension issued by the President of the Panchayat, pending disciplinary action. The learned Single Judge found on a reading of Ext.P5 and other materials on record that there is nothing to show that the Suspending Authority was satisfying the conditions laid down in Rule 8(1) of the Kerala Panchayat Raj (Control Over Officers) Rules, 1997. This view taken by the learned Single is not shown to be wrong by placing any materials on record. Apart from the fact that the order does not contain various conditions as referred to in the Rules, there is no other supporting materials also to be gathered

therefrom. The Suspending Authority was satisfied all such conditions existed in the case before he issued the order of suspension. In such circumstances, we find no reason to interfere with the judgment of the learned Single Judge impugned in this appeal.

2. Appellants apprehend that in the absence of any observation in the judgment regarding their right to keep the employee under suspension by issuing any fresh order it may appear as though such right is totally taken away by the impugned judgment. We do not think so. When an order of suspension was under challenge and the only action of which it has been set aside is for the non-compliance of the conditions stipulated in Rule 8 (1) of the Act and not on the ground of any mala fides, it will always be open to the authority to exercise their right even subsequently if the facts and circumstances warrant such suspension and if any such order is issued, certainly the

employee concerned will be at liberty to challenge the same. However, we notice that the writ petitioner had approached this Court earlier by filing W.P.(C).No.29540/2006 against his termination, which was already set aside by this Court by judgment dated 12th January, 2007 rendered in the said writ petition. There was a further observation that he shall be deemed to be in service. The complaint of the respondent is that he was not reinstated and by Ext.P5 order he was kept under suspension and no salary is paid. Now that the order of suspension is also set aside by this Court, he contends that he deems to be in service even thereafter. There is force in this contention. We make it clear that in the light of the judgment of this Court in W.P.(C). No.29540/2006 and also in view of the judgment impugned in this appeal, which we find does not call for any interference, the respondent will be entitled for the salary until he is reinstated or

kept under suspension by a proper legal order issued to him.

Writ Appeal is dismissed.

P.R.RAMAN,
Judge.

ANTONY DOMINIC,
Judge.

kcv.